

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID C. FORNEY,)	4:09CV3033
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
HINEMAN, Governor, and KEITH)	
COUNTY, NEBRASKA,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Motion for Leave to Appeal In Forma Pauperis. (Filing No. [58](#).) On December 2, 2009, the court dismissed Plaintiff's claims without prejudice and entered Judgment against him. (Filing Nos. [53](#) and [54](#).) On November 1, 2010, Plaintiff moved to reopen the case. (Filing No. [56](#).) The court denied Plaintiff's Motion to Reopen on November 9, 2010. (Filing No. [57](#).) On January 3, 2011, Plaintiff filed a Notice of Appeal, which the court liberally construes as a notice of appeal of the court's November 9, 2010, Memorandum and Order. (Filing No. [58](#).)

[Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) requires that the notice of appeal in a civil case be filed within thirty days after the judgment or order appealed from is entered. "A timely notice of appeal is both mandatory and jurisdictional." [Burgs v. Johnson County, Iowa, 79 F.3d 701, 702 \(8th Cir 1996\)](#). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file appeal. [Id.](#) However, the district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause. [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#).

Plaintiff filed his Notice of Appeal more than 30 days after the court's November 9, 2010, Memorandum and Order. (See Docket Sheet.) Moreover,

Plaintiff did not move to extend the time to file a notice of appeal in this matter. (*Id.*) However, on the court's own motion, Plaintiff shall have until February 11, 2011, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit, Plaintiff's appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until February 11, 2011, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit by February 11, 2011, Plaintiff's appeal will not be processed.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on February 11, 2011.

DATED this 11th day of January, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge

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